

REMARKS

This amendment responds to the Office Action mailed April 15, 2004.

Accordingly, applicant respectfully submits that this response is being timely filed.

Claims 1-5 and 25-29 were pending. Claims 30-35 were added by this amendment. Thus, Claims 1-5 and 25-35 are currently pending.

CLAIM REJECTIONS

35 U.S.C. § 102(b) REJECTION OF CLAIMS 1-5

Claims 1-5 were rejected pursuant to 35 USC §102(b) as being anticipated by Hudak (US 5,353,205). In particular, the Office Action claims that Hudak discloses an ear support as disclosed by the present application. Applicants respectfully traverse.

Hudak is directed to a lighting device attached to an “earpiece of a pilot’s earphone headset or to a military pilot’s helmet.” (Hudak Abstract, line 3.) The Office Action refers to an “ear support 102.” However, the reference number 102 in Hudak is defined simply as an “earpiece.” (See col. 6, line 10.) This is notable as Applicants’ ear support 20 is sufficient to hold Applicants’ invention on a user’s ear while the device disclosed by Hudak requires either a complete pilot’s headset or a military pilot’s helmet to hold the earpiece 102 and light 10 to the user’s ear. (*Compare* Figure 4 and Hudak, Figures 6 and 8.)

Furthermore, Claims 1-5 have been amended to include the phrase “having a radial arm” to clarify that the ear support 20 of the present invention is distinguishable from the “earpiece 102” disclosed by Hudak. The “earpiece 102” in Hudak does not

comprise a radial arm attached to a power supply housing. Accordingly, Hudak does not anticipate claims 1-5. Reconsideration of this rejection is respectfully requested.

35 U.S.C. § 102(b) REJECTION OF CLAIMS 25-27

The Office Action rejected Claims 25-27 as being anticipated by Upah (U.S. 5,951,158). In particular, the Office Action states that Upah discloses a “curved ear support 12.” Applicants respectfully traverse.

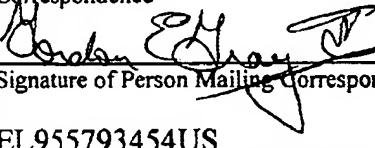
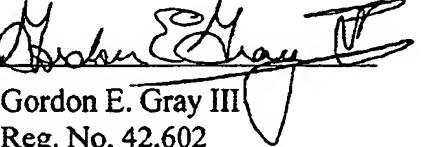
The reference number 12 in Upah refers to a “decorative body 12” that is “made in a variety of shapes, to provide a decorative and interesting appearance.” (Upah, col. 2, lines 7-9.) Upah discloses “illuminated earrings.” (Upah, Title). As such, while the “decorative body 12” is shown to be curved, i.e. a crescent moon, there is no indication in Upah that it provides any type of a support function such that it would be considered a “curved ear support” as in Claim 25. In fact, the element of Upah that supports the “decorative body 12” on the user’s ear is a straight shaft 14. (*See* Upah, col. 2, line 13 and Figure 1.) Accordingly, Upah does not anticipate Claims 25-27. Reconsideration of this rejection is respectfully requested.

DOUBLE PATENTING REJECTION

The Office Action rejected Claims 25-29 based on obviousness-type double patenting. Accordingly, Applicants submit herewith a “Terminal Disclaimer To Obviate A Double Patenting Rejection Over A Prior Patent.” Accordingly, Applicants respectfully submit that these claims are in condition for allowance.

CONCLUSION

Applicants believe that this case is in good condition for allowance, and a Notice of Allowance is earnestly solicited. If a telephone or further personal conference would be helpful, the Examiner is invited to call the undersigned, who will cooperate in any appropriate manner to advance prosecution.

<p>I hereby certify that the above correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 15, 2004.</p> <p><u>Gordon E. Gray III</u> Typed or Printed Name of Person Mailing Correspondence  Signature of Person Mailing Correspondence <u>EL955793454US</u> "Express Mail" Mailing Label Number</p>	<p>Respectfully submitted,</p> <p> Gordon E. Gray III Reg. No. 42,602 GRAY LAW FIRM 4401 N. Atlantic Ave., Suite 233 Long Beach, CA 90807 Telephone: (562) 984-2020 Facsimile: (562) 984-2019</p>
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